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15 UNITED STATES DISTRICT COURT  
16 CENTRAL DISTRICT OF CALIFORNIA

17 NATHANIEL SCHWARTZ, on behalf  
18 of himself and all others similarly  
situated,

19 Plaintiff,

20 v.

21 LIGHTS OF AMERICA, INC., a  
22 California corporation; and DOES 1-10,

23 Defendants.  
24  
25  
26  
27  
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Case No.: 2:11-cv-01712-JVS-MLGx

(Consolidated with: 8:10-cv-01333-  
JVS-MLG)

Assigned to Hon. James V. Selna

**[PROPOSED] STIPULATED  
PROTECTIVE ORDER**

Complaint Filed: February 25, 2011

**STIPULATED PROTECTIVE ORDER**

It is hereby stipulated among NATHANIEL SCHWARTZ (“Schwartz”), plaintiff in *Schwartz v. Lights of America, Inc.*, Case No. 2:11-cv-01712-JVS-MLG (the “Schwartz Action”), CHRISTOPHER NELSON (“Nelson”), plaintiff in *Nelson v. Lights of America, Inc.*, Case No. 8:10-cv-01333-JVS-MLG (the “Nelson Action”) (the Schwartz Action together with the Nelson Action, as consolidated by the Court, the “Action”), and defendant LIGHTS OF AMERICA, INC., a California corporation (“Defendant” or “LOA”), that the following procedures, once ordered and entered by the Court, shall govern the handling of any documents produced or deemed produced in this Action, depositions, deposition exhibits, testimony, all responses to written discovery, and all other discovery obtained in this Action, as well as the use of any document or other information designated by any party to this Action as being subject to this Protective Order:

**PURPOSE AND SCOPE**

1. Disclosure and discovery in this Action may involve the production of confidential, proprietary and/or private consumer information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation is warranted. Accordingly, the Parties hereto stipulate to and petition the Court to enter this Stipulated Protective Order (the “Protective Order”) pursuant to Federal Rule of Civil Procedure (“Fed. R. Civ. P.”) 26(c) to protect against unauthorized disclosure of such information.

2. This Protective Order shall govern not only the originals of “Confidential Material,” as defined herein, but also all copies, and excerpts, summaries, or compilations thereof, materials derived therefrom, and testimony, conversations, or presentations by Parties or Counsel to or in Court, or in any other setting that contain confidential, proprietary, or private consumer information.

## DEFINITIONS

3. The following terms, as used within this Protective Order are defined as follows:

a. Action: means and refers to the consolidated actions of *Schwartz v. Lights of America, Inc.*, United States District Court, Central District of California, Case No. 2:11-cv-01712-JVS-MLG, and *Nelson v. Lights of America, Inc.*, United States District Court, Central District of California, Case No. 8:10-cv-01333-JVS-MLG, and all actions now or later consolidated with these actions, through final judgment;

b. Party or Parties: means and refers to any party to this Action, including, in the case of parties other than individuals, their officers, directors, employees, and agents;

c. Disclosure or Discovery Material: means and refers to all items or information, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony, transcripts, tangible things, writings and information, whether in hard copy form, in electronically readable form, verbal, or otherwise) that are produced or generated in disclosures or responses to discovery in this Action;

d. "Confidential Material": means and refers to (i) Personal Identifying Information or commercial, business, financial, and/or proprietary information which is confidential in accordance with law and claimed as such by any Party or non-party producing same; (ii) information subject to a legally protected right of privacy; (iii) personal consumer information subject to protection under the law; (iv) information that any Party or non-party in good faith believes poses a significant risk of business, competitive, or other harm if disclosed; and (v) proprietary or trade secret information, such as automated systems, financial strategies, marketing concepts and internal marketing strategies, pricing, customer or client lists, non-public development concepts or research and development related

1 to such concepts, supplier and vendor lists, costs of operations, and non-public  
2 aggregations of data and data analysis;

3 e. Personal Identifying Information: means and refers to personally  
4 identifiable and private information of consumers, including names, addresses,  
5 telephone numbers, email addresses, and bank account and credit card information.

6 f. Receiving Party: means and refers to a Party that receives  
7 Disclosure or Discovery Material from a Producing Party;

8 g. Producing Party: means and refers to a Party or non-party that  
9 produces Disclosure or Discovery Material;

10 h. Designating Party: means and refers to a Party or non-party that  
11 designates information or items that it produces in disclosures or in responses to  
12 discovery as “Confidential Material” in this Action;

13 i. Protected Material: means and refers to any Disclosure or  
14 Discovery Material that is designated as “Confidential Material”;

15 j. Outside Counsel: means and refers to attorneys who are not  
16 employees of a Party but who are retained to represent or advise a Party, and shall  
17 include other persons employed by their law firms who are working on this Action;

18 k. House Counsel: means and refers to all attorneys who are  
19 employees of a Party, as well as paralegal assistants, secretaries, and clerical and  
20 administrative personnel who work with and/or assist such attorneys;

21 l. Counsel (without qualifier): means and refers to Outside Counsel  
22 and House Counsel (as well as their support staffs);

23 m. Expert: a person with specialized knowledge or experience in a  
24 matter pertinent to the litigation who has been retained by a Party or its Counsel to  
25 serve as an expert witness or as a consultant in this Action.

## 26 APPLICABILITY AND DURATION

27 4. The provisions of this Protective Order shall apply to: (1) the Parties  
28 currently named or later joined in this Action; (2) any non-party who produces

1 Disclosure or Discovery Material in this Action; and (3) any non-party who receives  
 2 Disclosure or Discovery Material. Any person from whom discovery is sought shall  
 3 be entitled to designate materials and testimony produced in this Action as  
 4 “Confidential Material” pursuant to the terms of this Protective Order. Furthermore,  
 5 any Party or non-party, pursuant to this Protective Order, may, as hereinafter  
 6 provided, designate as “Confidential Material” Disclosure or Discovery Material  
 7 produced by any other Party or non-party that satisfies the definition of  
 8 “Confidential Material” above. The confidentiality obligations imposed by this  
 9 Protective Order shall survive termination of the Action and shall remain in effect  
 10 until a Designating Party agrees otherwise in writing or a Court order otherwise  
 11 directs.

12 5. The restrictions contained herein on the use or disclosure of Disclosure  
 13 or Discovery Material designated “Confidential Material,” and the information  
 14 contained, therein shall not apply to any information, document or tangible thing  
 15 that:

16 a. prior to disclosure in discovery, is already in the possession of the  
 17 Receiving Party or is in the public domain through no fault of the Receiving Party;

18 b. has been obtained lawfully by a Receiving Party, other than through  
 19 discovery in this action, from a person who, to the best of such Receiving Party’s  
 20 knowledge, was not at the time such information, document or tangible thing was  
 21 obtained by such Receiving Party, under a lawful duty to maintain such information,  
 22 document or tangible thing in confidence.

23 6. Nothing in this Protective Order shall limit any Party’s right to disclose  
 24 to any person, or use for any purpose, its own information, documents, or tangible  
 25 things.

## 26 **DESIGNATION OF PROTECTED MATERIAL**

27 7. Manner And Timing Of Designations. Except as otherwise provided in  
 28 this Protective Order, or as otherwise stipulated or ordered, material that qualifies

1 for protection under this Protective Order must be clearly designated as such before  
2 the material is disclosed or produced. Designation in conformity with this  
3 Protective Order requires:

4 a. For documents (apart from transcripts of depositions or other  
5 pretrial or trial proceedings): The designation "Confidential Material" should be  
6 made in the lower left hand corner of the document, or such other area of the  
7 document as to avoid obscuring any original material.

8 b. For discovery responses, the designation "Confidential Material"  
9 should be made on the caption page; the Protected Material should be segregated  
10 from the remainder of the discovery responses and served separately.

11 c. Testimony taken at a deposition, conference, or hearing, as well as  
12 exhibits used in connection with such testimony, may be designated as "Confidential  
13 Material" by making a statement to that effect on the record at the deposition or  
14 other proceeding. Arrangements shall be made with the court reporter taking and  
15 transcribing such proceeding to bind separately such portions of the transcript  
16 containing information designated as Protected Material and to label such portions  
17 with the appropriate designation. Alternatively, any Party and any non-party that  
18 sponsors, offers, or gives the testimony may invoke on the record before the  
19 deposition or proceeding is concluded a right to have up to fifteen (15) days from  
20 the date of receipt of a copy of the transcript to identify the specific portions of the  
21 testimony as to which protection is sought. During the 15-day period, up to the date  
22 that designations are provided, the entire transcript shall be deemed "Confidential  
23 Material." Only those portions of the testimony that are appropriately designated  
24 for protection within the fifteen (15) day period shall be covered by the provisions  
25 of this Protective Order. A deposition transcript containing Protected Material shall  
26 not be filed with the Court unless submitted in accordance with the procedures set  
27 forth in paragraph 18 below.

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d. For information produced in some other form, and for any other tangible items: the Designating Party must affix in a prominent place on the exterior of any container, canister, disk, CD, DVD, or other media or receptacle in which Protected Material is kept or stored the legend "Confidential Material." If there is no place upon which to put such legend, then the Designating Party must describe in writing and in sufficient detail the Protected Material, indicate whether the Protected Material is designated "Confidential Material" and provide this writing to all other Parties before or at the time production is made or, in the case of a production of Protected Material by a third party, within fifteen (15) days of that production.

8. Inadvertent Failures To Designate. An inadvertent failure to designate Disclosure or Discovery Materials as Protected Material at the time of production or the designation of such materials may be remedied by supplemental written notice given by the Producing Party and reproduction of the item or document with a new confidentiality designation. Upon receipt of same, all documents, materials, or testimony so designated or re-designated shall be fully subject to this Protective Order as if it had been initially so designated; provided, however, that the Receiving Party shall incur no liability for any previous treatment of such information in conformance with its original designation. Any person or entity receiving such notice shall return or destroy all copies of material not appropriately designated, use the re-designated document or item going forward, and make a reasonable, good faith effort to insure that any documents, analyses, memoranda, or notes which were internally generated based upon such information shall immediately be treated in conformance with any such designation or re-designation.

9. Inadvertent Production of Privileged Information. The inadvertent production of any alleged privileged document or other information during discovery in this Action shall be dealt with in accordance with Fed. R. Civ. P. 26(b)(5)(B).



## **CHALLENGING CONFIDENTIALITY OBJECTIONS**

10. Timing Of Challenges. A Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

11. Meet And Confer. A Party that elects to initiate a challenge to a Designating Party's confidentiality designation must do so in good faith by giving written notice of its challenge (the "Challenge") to the Designating Party and to all other Parties in the Action. In its Challenge, the Challenging Party must explain the basis for its belief that the confidentiality designation is improper. Within 10-days of the date of the Challenge, the Designating Party must state in writing to all Parties whether it will re-designate the Protected Material as requested in the Challenge. If the Designating Party declines to re-designate the Protected Material, the Party initiating the Challenge may file a motion with the Court. Prior to filing such motion, the Party initiating the Challenge must comply with the requirements of Civil Local Rule 37-1 and 37-2 for the United States District Court, Central District of California.

12. Judicial Intervention. Upon such motion, it will remain the burden of the Designating Party to prove that the document or information in issue is entitled to protection. As necessary, the motion must comply with the provisions of paragraph 18 below. Until the Court rules on the challenge, all Parties shall continue to afford the material in question the level of protection to which it is entitled under the Designating Party's last designation.

## **ACCESS TO AND USE OF PROTECTED MATERIAL**

13. Except with the prior consent of the Designating Party or upon prior order of a court of competent jurisdiction, Protected Material shall not be disclosed except in accordance with the terms of this Protective Order. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a non-party solely in connection with this case for litigating, defending, or attempting



1 to settle this litigation, including any appeals. Such Protected Material may be  
 2 disclosed only to the categories of persons and under the conditions described in this  
 3 Protective Order. Protected Material must be stored and maintained by a Receiving  
 4 Party at a location and in a reasonably secure manner that limits access to the  
 5 Protected Material to persons authorized under this Protective Order. When the  
 6 Action has terminated, a Receiving Party must comply with the provisions of  
 7 paragraph 20 below.

8 14. Disclosure of “Confidential Material”. Unless otherwise ordered by the  
 9 Court or permitted in writing by the Designating Party, a Receiving Party may  
 10 disclose any Discovery Material or any other information or item designated as  
 11 “Confidential Material” only to the following:

12 a. the Receiving Party’s Outside Counsel of record in this Action, as  
 13 well as employees of said Outside Counsel to whom it is reasonably necessary to  
 14 disclose the information for purposes of this litigation;

15 b. the officers, directors, and employees (including House Counsel) of  
 16 the Receiving Party to whom disclosure is reasonably necessary for purposes of this  
 17 litigation;

18 c. Experts or consultants of the Receiving Party, and their staff, to  
 19 whom disclosure is reasonably necessary for purposes of this litigation and who  
 20 have signed the “Acknowledgement and Agreement to Be Bound by Protective  
 21 Order” that is attached hereto as Exhibit A;

22 d. the Court and its personnel, provided that any material filed as a  
 23 public record with the Court must be submitted under seal in accordance with C.D.  
 24 Local Rule 79-5, in camera, or as otherwise ordered by a court of competent  
 25 jurisdiction;

26 e. Professional Vendors, including court reporters, copy services and  
 27 their staffs, to whom disclosure is reasonably necessary for purposes of this  
 28 litigation;

1 f. during their depositions, witnesses in the Action to whom disclosure  
 2 is reasonably necessary for purposes of this litigation and, if they are non-party  
 3 witnesses, who have signed the “Acknowledgement and Agreement to Be Bound by  
 4 Protective Order” that is attached hereto as Exhibit A. Pages of transcribed  
 5 deposition testimony or exhibits to depositions that reveal Protected Material may  
 6 not be disclosed to anyone except as permitted under this Protective Order; and

7 g. the author of the document or the original source of the information  
 8 or any recipients named on the document.

9 15. Agreement To Be Bound By Protective Order.

10 a. Agreement Must Be Signed Prior To Disclosure: Each person to  
 11 whom “Confidential Material” may be disclosed that is also required to sign the  
 12 “Acknowledgement and Agreement to be Bound” (attached hereto as Exhibit A)  
 13 shall do so prior to the time such Material is disclosed to him or her.

14 b. Outside Counsel for each Party will be responsible for maintaining  
 15 the originals of the “Acknowledgement and Agreement To Be Bound By Protective  
 16 Order” until the conclusion of this Action, including any appeals. Upon request,  
 17 Outside Counsel for each Party shall serve a copy of each such acknowledgment  
 18 upon Outside Counsel for each other Party. The Parties agree not to use these  
 19 acknowledgments for any purpose other than monitoring and enforcing compliance  
 20 with this Protective Order.

21 c. Any person who receives Protected Material pursuant to paragraph  
 22 14 above shall not knowingly disclose such information to any person who is not  
 23 entitled to receive such information under this Protective Order or another order that  
 24 compels such disclosure. Any such person will not use the Protected Material, or  
 25 any information containing such, for business or competitive purposes or for any  
 26 purpose other than the litigation or defense of this Action.

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**DEPOSITION PROCEDURES**

16. At any deposition session, when use of a document or the answer to a question is likely to result in the disclosure of Protected Material, Counsel shall have the option, in lieu of taking other steps available under the Fed. R. Civ. P., to request that all persons other than the reporter, Counsel, and individuals specified in paragraph 14 above leave the deposition room during the “Confidential Material” portion(s) of the deposition.

**UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

17. If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Protective Order, or has caused to be filed Protected Material in a filing with this Court, the Receiving Party must immediately; (a) notify in writing the Designating Party of the unauthorized disclosures; (b) use its best efforts to retrieve all copies of the Protected Material; (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Protective Order; and (d) request such person or persons execute the “Acknowledgment and Agreement to Be Bound by Protective Order” that is attached hereto as Exhibit A.

**FILING PROTECTED MATERIAL**

18. A Party who files or intends to file with the Court Protected Material designated as “Confidential Material,” or any document that reproduces, quotes from, paraphrases, or summarizes Protected Material designated as “Confidential Material,” shall comply with C.D. Cal. Local Rule 79-5, which governs the procedures for filing material under seal, except as may be otherwise ordered by a court of competent jurisdiction. In any application to file under seal, the applicant shall identify for the Court, by paragraph or by page and line numbers, the portions of the document submitted for filing that reproduces, quotes from, paraphrases, or summarizes Protected Material designated as “Confidential Material.”

**TRIAL PREPARATION AND TRIAL**

19. Nothing in this Protective Order shall purport to control the use of “Confidential Material” during trial, other matters of trial management, or oral argument on motions.

**RETURN OR DESTRUCTION OF DISCOVERY MATERIAL**

20. All provisions of this Protective Order restricting the use of information obtained during discovery shall continue to be binding after the conclusion of this Action. Upon final termination of the Action, Outside Counsel for each Receiving Party shall, upon request, destroy or return to a Producing Party any documents and materials designated as “Confidential Material” and all copies or summaries thereof, except that the Receiving Party may retain one copy of any such material and any documents, copies or summaries containing attorney work product. Within ninety (90) days following the final termination of the Action, upon request, the Receiving Party or its Outside Counsel shall submit a written certification to the Producing Party stating that all Protected Material was returned or destroyed and affirming that the neither the Receiving Party nor its Outside Counsel has retained any copies, abstracts, compilations or summaries, or reproduced or captured the Protected Material in any other form or manner other than the single copy allowed and any attorney work product.

**PROTECTED MATERIAL SUBPOENAED OR ORDERED**

**PRODUCED IN OTHER LITIGATION**

21. If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as “Confidential Material,” the Receiving Party shall, as soon as practicable, notify the Producing and/or Designating Party in writing or by phone. Such notification must include a copy of the subpoena or court order. The Receiving Party shall, to the extent permitted by law, court rule or court order, withhold production of the requested Protected Material for seven (7) days after

1 giving such notice to enable the Producing and/or Designating Party to move to  
 2 quash or limit the subpoena or document demand or request for disclosure. Should  
 3 the Producing and/or Designating Party make such a motion or take any other action  
 4 to limit the subpoena, document demand, or request for disclosure, the Receiving  
 5 Party shall withhold the production until the motion or other action is resolved,  
 6 provided a court order is obtained allowing the Party to do so.

7 22. The Receiving Party must also promptly inform in writing the party  
 8 who caused the subpoena or order to issue in the other litigation that some or all of  
 9 the material covered by the subpoena is subject to this Protective Order. In addition,  
 10 the Receiving Party must deliver a copy of this Protective Order promptly to the  
 11 party in the other action that caused the subpoena or order to issue.

#### 12 **FURTHER MOTIONS NOT PRECLUDED**

13 23. Entry of this Protective Order shall be without prejudice to any motion  
 14 for relief from the provisions hereof or to any motion for further restriction on the  
 15 production, exchange, or use of any Disclosure or Discovery Material or other  
 16 information in the course of this Action; provided, however, that no Party subject to  
 17 this Protective Order shall make any such motion after the entry of a final judgment  
 18 or settlement in this Action.

#### 19 **MISCELLANEOUS**

20 24. No Party waives any right it otherwise would have to object to  
 21 disclosing or producing any information or item on any ground not addressed in this  
 22 Protective Order. Similarly, no Party waives any right to object on any ground to  
 23 the use in evidence of any of the material covered by this Protective Order.

24 25. Any Party serving a subpoena on any non-party shall concurrently  
 25 deliver a copy of this Protective Order.

IT IS SO ORDERED.

Dated: November 23, 2011

**MARC L. GOLDMAN**

Hon. Marc L. Goldman  
United States Magistrate Judge

**EXHIBIT A****ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_, of

\_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Protective Order that was issued by the United States District Court for the Central District of California on \_\_\_\_\_ in the consolidated cases of *Schwartz v. Lights of America, Inc.*, United States District Court, Central District of California, Case No. 2:11-cv-01712-JVS-MLG (the “Schwartz Action”) and *Nelson v. Lights of America, Inc.*, United States District Court, Central District of California, Case No. 8:10-cv-01333-JVS-MLG (the “Nelson Action,” as consolidated with the Schwartz Action, the “Action”). I agree to comply with and to be bound by all the terms of this Protective Order I will not disclose in any manner any information or item that is subject to this Protective Order to any person or entity except in strict compliance with the provisions of this Protective Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed name: \_\_\_\_\_